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17 Sandoval

18  
19 IN THE UNITED STATES DISTRICT COURT  
20  
21 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
22  
23 SAN FRANCISCO DIVISION

24  
25 **JAHIR ALBERTO ROJAS,**

26 Plaintiff,

27 v.

28 **R. LOZA, Correctional Officer, R. SINGH,  
29 Correctional Officer, D. SANDOVAL, Correctional  
30 Officer,**

31 Defendants.

32 C 07-4662 MMC

33 **DECLARATION OF E.  
34 MEDINA IN SUPPORT OF  
35 DEFENDANTS' MOTION TO  
36 DISMISS**

37  
38 I, E. MEDINA, declare as follows:

39  
40 1. I am employed by the California Department of Corrections and Rehabilitation  
41 (CDCR) as an Inmate Appeals Coordinator at Salinas Valley State Prison (Salinas Valley). My  
42 job duties include processing inmate appeals (Form CDC 602), assigning appeals to the  
43 appropriate staff, and monitoring and maintaining the computer database in the Salinas Valley  
44 Inmate Appeals Office. I am competent to testify to the matters set forth in this declaration, and  
45 if called upon to do so, I would and could so testify. I submit this declaration in support of

1 Defendants' Motion to Dismiss.

2 2. Form CDC 602 appeals that meet the criteria for review under the California Code of  
3 Regulations, and have been submitted for review, are recorded in the Inmate Appeals Office  
4 computer database. The recording is made at or near the time the inmate appeal is received by  
5 me or another employee with personal knowledge of the appeal process. The database is kept in  
6 the course of regularly conducted business activity and every effort is made to maintain the  
7 accuracy and integrity of each record maintained.

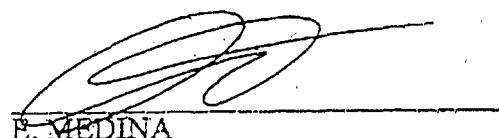
8 3. I have searched the Salinas Valley Inmate Appeals Office's computer database for all  
9 records of appeals filed by inmate Jahir Rojas, CDCR number P-58734.

10 4. Attached as Exhibit A is a true and correct copy of the computer printout from Salinas  
11 Valley's Inmate Appeals Office showing Inmate Rojas' appeals history through May 28, 2008.  
12 The inmate appeals are tracked by the status report in Exhibit A.

13 5. Attached as Exhibit B is a true and correct copy of the appeal bearing institutional log  
14 number SVSP-D-07-01389 (Appeal). The Appeal was received by the inmate appeals office on  
15 March 28, 2007 as a staff complaint. Any CDC 602 form submitted as a staff complaint  
16 bypasses the informal level of review under Cal. Code Regs. tit. 15, § 3084.5(g). The Appeal  
17 was screened out for untimeliness because it was not filed within fifteen working days of the  
18 event as required by Cal. Code Regs. tit. 15, § 3084.6(c).

19 6. Attached as Exhibit C is a true and correct copy of the Rules Violation Report, C07-02-  
20 0023, dated February 19, 2007, against inmate Rojas for battery on a peace officer that occurred  
21 on February 12, 2007. Inmate Rojas was found guilty of the rules violation.

22 I declare under penalty of perjury that the foregoing is true and correct. Executed at  
23 Soledad, California, on June 12, 2008.



E. MEDINA

24

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27

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Decl. of E. Medina in Supp. Mot. to Dismiss

Rojas v. Loza, et al.  
C 07-4662 MMC

# EXHIBIT A

**CALIFORNIA DEPARTMENT OF CORRECTIONS**  
**Inmate/Parolee Appeals Tracking System - Level I & II**

**Appeal Listing**

Sorted By: CDC Number						
CDC Number	Appellant Name	Area Of Origin	Issue	Log Number	Group Appeal	Appeal Listing
P58734	ROJAS, J	R&R	PROPERTY	SVSP-C-		
P58734	ROJAS, J	FAC. C 5	PROGRAM	SVSP-C-		
	<b>Informal Review:</b>	<b>Received:</b> 07/06/2004	<b>Due:</b>	<b>Completed:</b> 08/12/2004	<b>Disposition:</b> WITHDRAWN	
	<b>Informal Review:</b>	<b>Received:</b> 10/05/2006	<b>Due:</b> 10/20/2006	<b>Completed:</b> 10/20/2006	<b>Disposition:</b> DENIED	
P58734	ROJAS, J	FAC. C 5	MEDICAL	SVSP-C-		
P58734	ROJAS, J	FAC. C 5	MEDICAL	SVSP-C-		
P58734	ROJAS, J	FAC. D 2	STAFF COMPLAINTS	SVSP-D-		
P58734	ROJAS, J	FAC. D 2	STAFF COMPLAINTS	SVSP-D-07-01389		
	<b>Level I Review:</b>	<b>Received:</b> 03/28/2007	<b>Due:</b> 05/09/2007	<b>Completed:</b> 04/24/2007	<b>Disposition:</b> SCREENED OUT	
P58734	ROJAS, J	D9 AD-SEG	PROPERTY	SVSP-D-07-03845		
	<b>Level I Review:</b>	<b>Received:</b> 08/28/2007	<b>Due:</b> 11/02/2007	<b>Completed:</b> 10/24/2007	<b>Disposition:</b> GRANTED IN PART	
P58734	ROJAS, J	D9 AD-SEG	SEGREGATION HEARINGS	SVSP-D-07-04084		
	<b>Level I Review:</b>	<b>Received:</b> 09/14/2007	<b>Due:</b> 10/29/2007	<b>Completed:</b> 09/27/2007	<b>Disposition:</b> GRANTED IN PART	
	<b>Total:</b>	<b>8</b>				

# **EXHIBIT B**

EXHIBIT

D

INMATE/PAROLEE  
APPEAL FORM  
CDC 602 (12/87)LOCATION: Institution/Parole Region: 61bpd Log No. 07-01389-7 Category: 7

2.

2.

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be for using the appeals procedure responsibly.

misuse of force

2/12/07

NAME: ROJAS J. NUMBER: PS6734 ASSIGNMENT: W/A UNIT/ROOM NUM: D2-111

A. Describe Problem: On FEBRUARY 12, 2007 THE SPECIFIC ACT OF EXCESSIVE USE OF FORCE WAS USED AGAINST ME WHILE OFFICER LOZA APPLIED FLEXCUFFS ON ME IN A HALLWAY WHICH CAUSED ME PHYSICAL DISCOMFORT AND CAUSED RESTRICTION OF BLOOD FLOW TO MY WRISTS. CH/LOZA PROCEEDED TO LIFT ME OFF THE GROUND FROM THE FLEXCUFFS ASSISTING CH/LOZA WAS CLS/ING, CAUSING THE FLEXCUFFS TO DIG INTO MY WRISTS. AS THEY LIFTED ME UP OFF THE GROUND THEY PROCEEDED TO SWING ME HARSHLY CAUSING ME TO LOSE MY FEET WHICH THEY REATED TO AND IMMEDIATELY SITTING ME ON THE GROUND AND SLAMMED ME TO THE GROUND. AS I LAY DOWN I REMAINED SO ON THE GROUND IN AN UNRESISTIVE MANNER. CH/LOZA AND CLS/ING BACKED AWAY FROM ME AT WHICH POINT CH/LOZA BEGAN TO PEPPER SPRAY ME IN MY FACIAL AREA. CAUSING ME TO CATCH UP AND FEEL A BURNING SENSATION TO MY FACIAL AREA. CH/LOZA  
If you need more space, attach one additional sheet.

B. Action Requested: IN SEEKING REVENGE IN MONETARY DAMAGES (Actual, Compensatory, Punitive) AGAINST PRISON OFFICIALS IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES FOR INTENTIONAL VIOLATION OF FEDERAL MERRIT, PERSONAL HUMILIATION, MEDICAL AND SURGICAL ASSAULT AND BATTERY, NECK INJURY AND BURN BUCKLING OF AND PAIN RELEASER AND CALLOUS DISRESPECTFUL STATE AND FEDERAL RIGHTS AS WELL AS INTENTIONAL VIOLATION OF STATE AND FEDERAL LAW AND WILLFUL AND MALITIOUS INTENT IN USING FORCE IN UNNECESSARY A PELL-MELL.

Inmate/Parolee Signature: Peter RojasDate Submitted: 2-28-07

C. INFORMAL LEVEL (Date Received: \_\_\_\_\_)

Staff Response: \_\_\_\_\_

Date Submitted: 2-28-07Date Received: 2-28-07

Staff Signature: \_\_\_\_\_

Date Returned to Inmate: \_\_\_\_\_

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents/Completed CDC 115, investigator's Report, Classification chrono, CDC 103, etc., submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of this form.

BYPASS

Signature: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

Date Received: \_\_\_\_\_

CC Receipt Number: \_\_\_\_\_

received (another 602 that was  
3/6/07.)

~~EX-1~~

3/29/07 5/9/07

E. REVIEWER'S ACTION (Complete within 15 working days); Date assigned:

Interviewed by:

Due Date:

Staff Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date Completed: \_\_\_\_\_

Division Head Approved:

Returned

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date to Inmate: \_\_\_\_\_

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

APPELLANT SEEKS REDRESS FOR NON-INITIAL PUNITIVE AND COMPENSATORY DAMAGES AND WAS NOT RELIEVED OF THE AFFOREMENTIONED REQUESTED IN THE (1) LEVEL RESPONSE. THERE HAS BEEN NO TYPE OF ATTEMPT TO RESOLVE MY GRIEVANCE. THEREFORE IN REQUESTING (2) LEVEL RESPONSE.

Signature: *John P. Ross* DELIVERED APR 25 2007 Date Submitted: 4/10/07

Second Level  Granted  P. Granted  Denied  Other \_\_\_\_\_

G. REVIEWER'S ACTION (Complete within 10 working days); Date assigned: 2007-03-29 DELIVERED APR 11 2007 Due Date: RECEIVED APR 11 2007

 See Attached Letter

Signature: \_\_\_\_\_ Date Completed: \_\_\_\_\_

Warden/Superintendent Signature: \_\_\_\_\_ Date Returned to Inmate: \_\_\_\_\_

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

APPELLANT IS STILL DISSATISFIED, THE (1) AND (2) LEVELS OF REVIEW. THEY HAVE NOT MADE ANY ATTEMPT TO RESOLVE MY GRIEVANCE. INSTEAD ALLEGED THAT I DO NOT MEET TIME CONSTRAINTS. THE DATE I SUBMITTED THIS (OR DATE ON 1/22/07) WHICH IS CLEARLY SHOWN ON THE (1) ALSO WHICH IS IN ACCORDANCE WITH THE TIME CONSTRAINTS AS NOTED ON THE (2) DATE IS SECTION 3084.6 (C). APPELLANT IS STILL SEEKING RELIEF FROM THIS ISSUE.

Signature: *John P. Ross* Date Submitted: 4/25/07

For the Director's Review, submit all documents to: Director of Corrections

P.O. Box 942883  
Sacramento, CA 94283-0001  
Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION:  Granted  P. Granted  Denied  Other \_\_\_\_\_ See Attached Letter

Date: \_\_\_\_\_

TIBIT F

(2)

22 I WAS LIFTED UP OFF THE FLOOR THIS TIME BY MY ARMS, AND WAS ESCORTED OFF FAC "C" RECREATION YARD TOWARDS FAC "C" HOBBY SHOP AREA. (C) LATER IDENTIFIED AS CLO/LOZA BADGE #69912 AND CLO/LOZA BADGE #66685. RAMMED ME AGAINST THE WALL AND BEGAN TO STRIKE ME IN MY UPPER AND LOWER TORSO WITH CLENCHED FISTS, KNEEING AND KICKING ME AS WELL. IN A MALICIOUS AND SADISTIC MANNER. ALL THE WHILE MY HANDS BEING UNDER RESTRAINTS WITH HANDCUFFS. THERE WERE NO UNNECESSARY INFILATIONS CAUSED ME A GREAT DEAL OF PAIN TO MY HEAD, FACE, NECK AND BACK. (ANS) AFRAYSONS, BRUISES AND SWELLING TO MY FACE AND BACK. I HAD TO RECEIVE FIRST AID TREATMENT. THESE CLO/LOZA IS BLATANTLY AND CALIBROUSLY DISREGARDED MY CALIFORNIA CONSTITUTIONAL RIGHTS AS WELL AS 13TH AMENDMENT RIGHT TO CURE AND/OR DISCRIMINATE. THERE UNLAWFUL ACTIONS OF AULTING ME ALL THE WHILE BEING UNDER RESTRAINTS, UNRESISTING, AND UNARMED WAS A TESTIMONY TO MY RIGHTS BEING VIOLATED. HERE NOWHERE FROM THE BEGINNING OF THE INCIDENT, IN WHICH THEY ORDERED ME TO "CRAWL BACKWARDS" LIKE SOME TYPE OF ANIMAL AND THE WAY THEY ADDRESSED ME, CAUSED ME A GREAT DEAL OF HUMILIATION, DOWNS TO ADD INSULT TO INJURY THEIR CAUSING ME MORAL ANXIETY DUE TO THEIR FALSE ACCUSATIONS TOWARDS ME, ONE STATING THAT I "BATTERED" HIM WITH MY LEFT ARM > HIS RIGHT RISCA/CAGE, ALSO THAT WHILE UNDER HIS ESCORT "I BROKE FREE FROM HIS GRASP AND DROPPED HIM DOWN TO THE GROUND WHERE HE COMMENCED TO LAND ON TOP OF ME" (THE FOREMENTIONED BEING WHAT CLO/LOZA STATED). ANOTHER (CLO/LOZA) STATING THAT AS HE OPENED THE DOOR TO THE HOLDING CELL ROOM, I BEGAN TO SHAKE MY UPPER BACK & BOTH ARMS IN A LEFT TO RIGHT MOTION CAUSING HIM TO LOSE CONTROL OF MY LEFT ARM. SUCH INCIDENT OCCURRED WHILE UNDER THESE CLO/LOZA'S ESCORT. I WAS NOT EVEN PUT INTO A "HOLDING CELL ROOM", FOR THAT MATTER NOT EVEN TO THE "C" HALL INDEX. I WAS TAKEN INTO THE HOBBY SHOP AREA FAC "C", WHERE THERE ARE "HOLDING CAGES". THERE WOULD NOT EVEN BE ROOM FOR ME TO FALL FORWARD AND LAND ON THE FLOOR, IN ONE OF THOSE HOLDING CAGES, LET ALONE ANOTHER BODY. THAT WERE THE CASE CLO/LOZA WOULD HAVE SUSTAINED AFRAYSONS TO SOME SECTION OF HIS BODY, DUE TO THE LACK OF SPACE OF THE HOLDING CAGE. IN ADDITION THERE WAS A THIRD CLO IN WHICH I AM STILL NOT ABLE TO IDENTIFY. BUT NONTHELESS THE 3RD UNIDENTIFIED CLO WAS PRESENT THROUGHOUT

oval saying to them. Not Right HERE stupid motherf\*ckers! Not Right HERE stupid!" When he said "Not Right HERE stupid!" he was addressing do bza and had pushed clo bza away from me, while clo sandoval has ceased his assault on me and took a couple steps back. The 3rd do then commenced to lift me up off the floor roughly and shoved me hard into a holding cage inside the hobby shop. There in that holding cage I was treated for my injuries and after taken directly to Administrative Segregation Housing Unit D2-111. Further more there is a videotape were it clearly shows my injuries. It was taken by FAC "C" or "D" program. Lieutenant Barroga when I interviewed by him, to the grievance I'm submitting the following items, a copy of my cell rules violation report, a copy of my I.R. SUP-FCY-07-02-0105 packet, and an allegation of misconduct by a peace officer to me.

# EXHIBIT C

STATE OF CALIFORNIA

## RULES VIOLATION REPORT

DEPARTMENT OF CORRECTION

CDC NUMBER P-58734	INMATE'S NAME ROJAS	RELEASE/BOARD DATE 1/4/11	INST. S.V.S.P.	HOUSING NO. C5-204	LOG NO. 007-02-0023
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VIOLATED RULE NO(S). C.C.R. §3005(c)	SPECIFIC ACTS Battery on a Peace Officer	LOCATION Fac "C" Yard #2	DATE 02/12/07	TIME 1515 Hrs.
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CIRCUMSTANCES On Monday, February 12, 2007, at approximately 1515 hours, while performing my duties as Facility "C" Yard #1 Officer #2, I responded to a disturbance on the Facility "C" Yard #2 exercise yard. I was informed the yard was in a prone position due to a massive grouping between approximately 140 black and southern Hispanic inmates, which resulted in a standoff, where all inmates refused to leave the yard for yard recall. I was assigned to an arrest team to assist the systematic recall of the yard. All inmates were compliant with staff instructions to crawl backwards towards the skirmish line, formed by responding staff and submit to flex cuffs, until we reached Inmate ROJAS, (P-58734, C5204), who was later identified by his state identification card. ROJAS refused several direct orders to remain prone and began advancing towards staff with clenched fists. After several orders to stop and assume a prone position on the ground, ROJAS complied. (Con't see CIC-115-C)

Inmate ROJAS [is not] a participant in the Mental Health Services Delivery System and is aware of this report.

REPORTING EMPLOYEE (Type Name and Signature) R. Loza, Correctional Officer	DATE 2-13-07	ASSIGNMENT "C" Yard #1 Officer #2	RPO'S S/S
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REVIEWING SUPERVISOR'S SIGNATURE	DATE 2/15/07	□ INMATE SEGREGATED PENDING HEARING	
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CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input checked="" type="checkbox"/> SERIOUS	OFFENSE DIVISION: 212067	DATE 2/20/07	CLASSIFIED BY (Type Name and Signature)	HEARING REFERRED TO:
--	-----------------------------	-----------------	---	----------------------

COPIES GIVEN INMATE BEFORE HEARING				
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<input type="checkbox"/> CDC 115	BY: (STAFF'S SIGNATURE)	DATE 02/13/07	TIME 2000	TITLE OF SUPPLEMENT IE
<input type="checkbox"/> INCIDENT REPORT LOG NUMBER: SVR RCY-07-02-0105	BY: (STAFF'S SIGNATURE) M.L.	DATE 2/17/07	TIME 1450	BY: (STAFF'S SIGNATURE)

HEARING  
I/m Rojas viewed videotape of incident on 9/15/07, he arraignment was postponed to afford him 10 days 24 hr. preparation time.

Plea: The charges were read aloud as written to Inmate Rojas, who acknowledged understanding the charges and who entered a plea of Not Guilty.

Findings: Inmate Rojas was found Guilty of violating CCR § 3005(c); specifically, "Battery on an Peace Officer," a Division "B" offense (CCR 3323(d)(1)).

Disposition: Assessed 150 days forfeiture of behavioral credits, consistent with a Division "B" offense (CCR 3323(d)(1)); Assessed 10 days loss of the following privileges: no yard access (to begin 09-05-07 and end 09-15-07); Inmate was counseled, warned and reprimanded.

Classification Referral: Referred to IOC for program review.

Disposition continued on CIC 115C

REFERRED TO <input type="checkbox"/> CLASSIFICATION ACTION BY: (TYPED NAME)	<input type="checkbox"/> BPT/NAEA	SIGNATURE	DATE 9/6/07	TIME 1100
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REVIEWED BY: (SIGNATURE) G. Ponder, Captain	DATE 1/20/07	CHIEF DISCIPLINARY OFFICER'S SIGNATURE G. Lewis	DATE 9/17/07	TIME
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BY: (STAFF'S SIGNATURE)	DATE 10/1/07	TIME 1800
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BY: (STAFF'S SIGNATURE)	DATE 10/1/07	TIME 1800
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BY: (STAFF'S SIGNATURE)	DATE 10/1/07	TIME 1800
-------------------------	-----------------	--------------

BY: (STAFF'S SIGNATURE)	DATE 10/1/07	TIME 1800
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CDC 115 (7/88)

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTION

PAGE \_\_\_\_ OF \_\_\_\_

## RULES VIOLATION REPORT - PART C

CDC NUMBER P-58734	INMATE'S NAME: ROJAS	LOG NUMBER C07-02-0023	INSTITUTION S.V.S.P.	TODAY'S DATE 02/12/07
<input type="checkbox"/> SUPPLEMENTAL <input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER				

Officer R. Singh provided security coverage, as I placed flex cuffs on ROJAS. Officer Singh and I assisted ROJAS to the standing position and began escorting him to the staging area by walking him backwards. During the escort, ROJAS began violently twisting his upper torso, swinging his elbows wildly left to right. I attempted to keep my grasp on his upper left arm to control the escort, while giving him numerous orders for him to stop resisting. ROJAS continued to violently swing his elbows, striking me on the right side of my ribcage, with his left elbow. In order regain control of the escort, I placed both my hands on his upper back area to gain the leverage necessary to utilize my body weight to force ROJAS onto the ground in a prone position. Once on the ground, ROJAS began shouting, "Get them!". Immediately the remaining unsecured southern Hispanics stood up and began advancing towards the skirmish line. I believed the advancing inmates intended to assault staff based on ROJAS' actions. Several munitions of CN, Gas, O.C. Pepper spray, 37mm 264 wooden baton rounds, 40mm direct impact munitions as well as use of the MEB baton were required to regain compliance for the Hispanic inmates to assume a prone position. One unidentified Hispanic inmate reached the skirmish line, forcing Officer Singh to break away from the escort to defend my position. During this time, ROJAS continued to resist by swinging his elbows and kicking his feet. Due to his assaultive behavior, I was forced to utilize my MK-9 O.C. Pepper spray, spraying him in the upper torso area to gain compliance, with my orders to stop resisting. Based on ROJAS' incendiary presence on the yard, Officer D. Sandoval assisted me in resuming the escort to a temporary holding cell in the Facility "C Health Services Annex. Officer Sandoval and I attempted to place ROJAS into temporary holding cell #2, when he again attempted to assault me. When Officer Sandoval opened the door to the holding cage, ROJAS began to shake his upper body vigorously in a left and right motion. Officer Sandoval lost his grip of ROJAS' left arm and ROJAS was able to break free of my grasp. I attempted to regain control of ROJAS, when he grabbed my right forearm, while his hands were still restrained to the rear by the flex cuffs. While maintaining his hold of my arm ROJAS fell forward, pulling me on top of him. Officer Sandoval regained control of his left arm allowing me to break free from ROJAS' grip. Finally, we were able to secure ROJAS in temporary holding cell #2, without further incident. Due to his disruptive behavior during an emergency, I'm recommending that ROJAS be referred to Unit Classification Committee (UCC) for transfer to another Level 4 institution.

Barboza, Correctional Officer

SIGNATURE OF WRITER		DATE SIGNED 02/23/07
GIVEN BY: (Staff's Signature)		DATE SIGNED 02/23/07
		TIME SIGNED 0000



COPY OF CDC 115-C GIVEN TO INMATE

STATE OF CALIFORNIA

## SERIOUS RULES VIOLATION REPORT

CDC NUMBER F-58734	INMATE'S NAME ROJAS	VIOLATED RULE NO.(S) C.C.R. §3005(c)	DATE 02/12/07	INSTITUTION S.V.S.P.	LOG NO. C07-02-0023
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REFERRAL FOR FELONY PROSECUTION IS LIKELY IN THIS INCIDENT  YES  NO

## POSTPONEMENT OF DISCIPLINARY HEARING

<input type="checkbox"/> I DO NOT REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE'S SIGNATURE ►	DATE
<input checked="" type="checkbox"/> I REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE'S SIGNATURE ►	DATE 2/12/07

DATE NOTICE OF OUTCOME RECEIVED

DISPOSITION

<input type="checkbox"/> I REVOKE my request for postponement.	INMATE'S SIGNATURE ►	DATE
--	-------------------------	------

## STAFF ASSISTANT

STAFF ASSISTANT <input type="checkbox"/> REQUESTED	INMATE'S SIGNATURE ►	DATE
<input type="checkbox"/> WAIVED BY INMATE		

<input type="checkbox"/> ASSIGNED	DATE	NAME OF STAFF
-----------------------------------	------	---------------

<input checked="" type="checkbox"/> NOT ASSIGNED	REASON DNMC	
--	----------------	--

## INVESTIGATIVE EMPLOYEE

INVESTIGATIVE EMPLOYEE <input type="checkbox"/> REQUESTED	INMATE'S SIGNATURE ►	DATE 2/12/07
<input type="checkbox"/> WAIVED BY INMATE		

<input type="checkbox"/> ASSIGNED	DATE	NAME OF STAFF
-----------------------------------	------	---------------

<input type="checkbox"/> NOT ASSIGNED	REASON	
---------------------------------------	--------	--

## EVIDENCE/INFORMATION REQUESTED BY INMATE:

## WITNESSES

WITNESSES REQUESTED AT HEARING (IF NOT PRESENT, EXPLAIN IN FINDINGS)

<input type="checkbox"/> REPORTING EMPLOYEE	<input type="checkbox"/> STAFF ASSISTANT	<input type="checkbox"/> INVESTIGATIVE EMPLOYEE	<input type="checkbox"/> OTHER	<input type="checkbox"/> NONE
---	--	---	--------------------------------	-------------------------------

WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)	GRANTED	NOT GRANTED	WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)	GRANTED	NOT GRANTED
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

INVESTIGATIVE REPORT: Investigative Employees must interview the inmate charged, the reporting employee, and any others who have significant information, documenting the testimony of each person interviewed. Review of files, procedures, and other documents may also be necessary.

INVESTIGATOR'S SIGNATURE  
►

DATE

COPY OF CDC 115-A GIVEN INMATE ►	BY: (STAFF'S SIGNATURE) ►	TIME 10:05	DATE 02/12/07
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STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

## NOTICE OF CLASSIFICATION HEARING

CDC 128 - B1 (Rev 2/95)

INMATE NAME	CDC NUMBER	TODAY'S DATE
Rojas	P-58734	09-05-07

YOU WILL APPEAR BEFORE A CLASSIFICATION COMMITTEE ON \_\_\_\_\_ FOR CONSIDERATION OF A  
MAJOR PROGRAM CHANGE AS FOLLOWS:

<input type="checkbox"/> TRANSFER	<input type="checkbox"/> INCREASE IN CUSTODY	<input type="checkbox"/> ASSIGNMENT TO SECURITY HOUSING
<input type="checkbox"/> REMOVAL FROM PROGRAM	<input checked="" type="checkbox"/> OTHER <u>Program Review</u>	

## REASON:

On 09-05-07 you were found guilty of Rules Violation Report Log # C07-02-0023  
for the specific act of "Battery on an Peace Officer."

STAFF: NAME R. Parin		Lieutenant
-------------------------	--	------------

ROUTING INSTRUCTIONS: ORIGINAL CLASSIFICATION COMMITTEE COPY - INMATE

**NAME: Rojas CDC# P-58734 HOUSING: D9-110 CDC 128-B**

Inmate Rojas's (P-58734) privileges are suspended pursuant to the disposition of CDC-115 RVR, Log Number C07-02-0023, and in accordance with CCR§ 3323(b)(1). As a result of this action, Inmate Rojas is subject to the conditions described in CCR§ 3333(a), and his privileges and non-privileges are as follows: A) No Yard access: Loss of yard privileges is for 10 Days, from 09-05-07 until 09-15-07.

Original: Central Records  
Cc: Facility 'C' Captain  
Property Room Officer  
Canteen Manager Officer  
Housing Unit  
Writer  
Inmate

*Ar*  
R. Parin  
Senior Hearing Officer  
Facility 'C' Lieutenant  
Salinas Valley State Prison

**DATE: 00-00-07**

**(Notice of 10 Days Loss of Yard)**

NAME and NUMBER ROJAS, P-58734

CDCR - 12BB (Rev. 4/74)

Case #SVSP-FCY-07-02-0105, dated 2/12/2007, 115 Log # CPLX IT MENTAL HLTH was forwarded to the Investigative Services Unit (ISU) for referral to the District Attorney's Office. On 8/22/2007, this case was returned to JSU indicating the case has been:

Accepted by the D.A.  
 Rejected by the D.A. (Reject dated 8/21/2007)  
 Declined by I.S.U.

cc: C-File  
Inmate  
115 Desk  
ISU case file  
Facility CCI

*John J. Parker*  
ISU STAFF  
Salinas Valley State Prison

Date: 8/22/2007

(DISTRICT ATTORNEY REFERRAL)

GENERAL CHRONO

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STATE OF CALIFORNIA  
RULES VIOLATION REPORT - PART C

## DEPARTMENT OF CORRECTIONS

PAGE 1 OF 2

CDC NUMBER P-58734	INMATE'S NAME Rojas	LOG NUMBER C07-02-0023	INSTITUTION SVSP	TODAY'S DATE 2-28-07
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<input type="checkbox"/> SUPPLEMENTAL	<input type="checkbox"/> CONTINUATION OF:	<input type="checkbox"/> CDC-115 CIRCUMSTANCES	<input type="checkbox"/> HEARING	<input type="checkbox"/> I.E. REPORT	<input type="checkbox"/> OTHER
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On 2-28-07, I was assigned as Investigative Employee for CDC-115 Rules Violation Report, Log Number C07-02-0023. I advised Inmate Rojas of my assignment and informed him that as the Investigative Employee, my duties are to act as a fact finder for the Senior Hearing Officer. Inmate Rojas acknowledged that he understood my role as the Investigative Employee and has indicated no objections to my assignment in this capacity. My report is as follows:

**Defendants Statement:** On this date, 2-28-07, I conducted an interview with Inmate Rojas (CDC# P-58734) regarding the charged offense. Inmate Rojas offered no statement. Inmate Rojas had the following questions for several staff witnesses:

Inmate Rojas had the following questions for LVN H. Sanchez MTA C-Yard:

Q.1.) Exactly where did you examine me for my injuries?  
 A.1.) You were still in the holding cell in the Health Services Annex.  
 Q.2.) Were you, or were you not the one who cut the plastic flex cuffs from my wrists because it was obvious that the flex cuffs were cutting circulation from my hands?  
 A.2.) Yes  
 Q.3.) On my 7219 did you or did you not circle the "wrists" as being part of my injuries from the lacerations that I sustained due to the flex cuffs being placed to tight on my wrists? If not please explain.  
 A.3.) No. You didn't have any lacerations on your wrists. You had indentations on your wrists.

Inmate Rojas had the following questions for Officer R. Loza:

Q.1.) When you placed the flex cuffs on me, did you instruct me to place my thumbs up?  
 A.1.) I don't recall giving those instructions.  
 Q.2.) What side of me did Officer Singh provide coverage for you, when you were placing the flex cuffs on me?  
 A.2.) I believe he was on the left side.  
 Q.3.) Where were you positioned when you assisted me to my feet?  
 A.3.) I was on the right side when I assisted you to the standing position. When I turned you around to escort you off the yard. I assumed control of your left bicep with my right hand.  
 Q.4.) Do you recall hearing me say anything? If so what did I say?  
 A.4.) Yes, you started shouting, "get them."

Inmate Rojas had the following questions for Officer Singh:

Q.1.) When Officer Loza was placing the flex cuffs on me did you physically restrain me? Explain what you were doing please.  
 A.1.) I didn't physically restrain you during cuffing.  
 Q.2.) When assisting me to my feet where exactly were you positioned to my body?  
 A.2.) I was on your left side.  
 Q.3.) Do you recall hearing me say anything? If so, what did I say?  
 A.3.) "Fuck you dirty mother fuckers, fuck these pigs up!"

**Reporting Employee's Statement:** On this date, 2-28-07, I interviewed the reporting employee, Officer R. Loza regarding the charges and his recollection of the events of that day. Officer Loza offered the following statement, "On 2-12-07, during a controlled recall of the C-Yard #2 I was escorting Inmate Rojas when he began to violently twist his upper torso. I believe he intentionally tried to assault me when he struck my right rib cage with his left elbow."

**Staff Witness Statement:** On this date, 2-28-07, I interviewed the staff witness, Officer Singh regarding the charges and his/her recollection of the events of that day. Officer Singh offered the following statement, "During the escort Inmate Rojas began violently moving his upper torso back and forth breaking free of my grasp. He continued swinging his upper

SIGNATURE OF WRITER M. Lukas	TITLE Correctional Officer	DATE NOTICE SIGNED 3/23/07
COPY OF CDC-115-C GIVEN TO INMATE	GIVEN BY: (STAFF'S SIGNATURE)	DATE SIGNED: 03/23/07 TIME SIGNED: 1800

STATE OF CALIFORNIA  
RULES VIOLATION REPORT - PART C

## DEPARTMENT OF CORRECTIONS

PAGE 2 OF 2

CDC NUMBER P-58734	INMATE'S NAME Rojas	LOG NUMBER C07-02-0023	INSTITUTION SVSP	TODAY'S DATE 2-28-07
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SUPPLEMENTAL  CONTINUATION OF:  CDC 115 CIRCUMSTANCES  HEARING  FILE REPORT  OTHER

torso with his hands drawn half way up his back with his elbows pointed out when he struck Officer Loza in the chest area with his left elbow. Physical force was used to forced Inmate Rojas to the ground and restrain control of the escort." *regain*

**Staff Witness Statement:** On this date, 2-28-07, I interviewed the staff witness, Officer Sandoval regarding the charges and his/her recollection of the events of that day. Officer Sandoval offered the following statement, "I helped escort Inmate Rojas into temporary holding cell #2. When he broke free of my grasp by twisting his upper torso violently in a left and right motion. From my vantage point I could not see if Inmate Rojas had a grip on the arm of Officer Loza. However, When Inmate Rojas fell to the ground Officer Loza fell on top of him. Officer Loza was not able to get back up until I helped regain control of Inmate Rojas."

**Investigative Employee's Summation:** On 2-28-07, I was assigned to perform the duties of the Investigative Employee for RVR Log # C07-02-0023. Inmate Rojas did not give a statement however, he did have specific questions for two officers and the LVN. I interviewed all three staff witnesses plus an additional staff witness for additional relevant information. Inmate Rojas did not request any witnesses present at the hearing. Inmate Rojas did request to review the video tape of the incident. Inmate Rojas states he is reserving the right to ask additional questions of staff witnesses pending review of the video.

Inmate Rojas did not request that any staff or inmate witnesses be present at the hearing at the time of this report  
Inmate Rojas did request that the Video Tape be produced at the hearing at the time of this report.

This matter is a D.A. Referral. Inmate Rojas was placed in Ad/Seg pending the adjudication of this Rules Violation Report.

SIGNATURE OF WRITER M. Lukas <i>M. Lukas</i>	TITLE Correctional Officer	DATE NOTICE SIGNED 3/23/07
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STATE OF CALIFORNIA

## RULES VIOLATION REPORT - PART C

DEPARTMENT OF CORRECTIONS

PAGE 1 OF 3

CDC NUMBER P-58734	INMATE'S NAME Rojas	LOG NUMBER C07-02-0023	INSTITUTION SVSP	TODAY'S DATE 09-05-07
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SUPPLEMENTAL  CONTINUATION OF:  CDC 115 CIRCUMSTANCES  HEARING  I.E. REPORT  OTHER

**Hearing:** Hearing commenced on 09-05-07 at 1117 hours, but was postponed in order to allow 24 hour preparation time after viewing the video tape. Hearing reconvened on 09-06-07.

**Inmate's Health:** Inmate Rojas stated that his health was well and that he was prepared to proceed with the hearing. I introduced myself as the SHO and explained the hearing procedures.

**MHSDS:** Inmate Rojas is not a participant in the Mental Health Services Delivery System.

**Date of discovery:** 02-12-07

**Initial RVR copy issued on:** 02-23-07

**Hearing Completed on:** 09-05-07

**Last document issued to inmate on:** 02-27-07

**D.A. Postponed date:** 02-23-07

**Date D.A. results issued:** 08-21-07

**Time Constraints:** All time constraints were met. Inmate Rojas was provided a copy of the CDC Form 115 within 15 days after the discovery of information leading to the charges. Hearing was held within 30 days of the date the inmate was provided a copy of the CDC Form 115. Inmate Rojas acknowledged receiving all documents used for this hearing 24 hours prior to the hearing.

**Staff Assistant (SA):** Inmate Rojas (has GED) does not meet the criteria for the assignment of a staff assistant per CCR§ 3315.

**Investigative Employee (IE):** Inmate Rojas requested and does meet the criteria for the assignment of an Investigative Employee per CCR§ 3315. Officer M. Lukas was assigned. Officer Lukas interviewed Inmate Rojas as a part of the investigative process, gathered information from witnesses, asking each witness specific questions posed by Inmate Rojas and follow up questions posed by the IE for clarification purposes. Officer Lukas prepared his report, to include his summation of the facts, and provided a copy of the report to Inmate Rojas more than 24 hours prior to this hearing.

**D.A. Referral:** This matter was referred to the Monterey County Attorney's Office. On 02-23-07, Inmate Rojas requested that the hearing be postponed pending outcome of the referral for prosecution. On 08-22-07, a memorandum was received from the Monterey County District Attorney's Office indicating that the case had been rejected for prosecution.

**Evidence Requested or Used:** Video tape evidence was used in the adjudication of this RVR.

**Video or Photo Evidence:** On 09-05-07, Inmate Rojas viewed the video tape of the incident and the hearing was postponed to afford him 24 hour preparation time as noted by his signature on the RVR CDC 115.

**Inmate Plea and Statement:** Inmate Rojas entered a plea of "Not Guilty," stating, "Everything he's saying is a fabrication. I didn't swing or grab him. How could I grab him, my thumbs were pointing up?"

**Witnesses Requested or Provided:** Inmate Rojas requested Inmates Zamora (T-37736), Phineas (V-13124), Rivera (H-92028), Felix (P-21955), Mosqueda (K-35661), Herrera (J-15446), Briceno (K-91638), Garcia (P-77075) as witnesses for the hearing. SHO asked Inmate Rojas what questions would he ask of these witness.

Inmate Rojas provided the following questions:

1) Where were you positioned when Inmate Rojas (P-58734) was being placed in flex cuffs?

Inmate Rojas stated these inmates would state they were facing in his direction. SHO agrees the inmate witnesses would state that they were facing in his direction.

SIGNATURE OF WRITER R. Parin	TITLE Correctional Lieutenant	DATE NOTICE SIGNED 9/6/07	
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STATE OF CALIFORNIA

## RULES VIOLATION REPORT - PART C

DEPARTMENT OF CORRECTIONS

PAGE 2 OF 3

CDC NUMBER P-58734	INMATE'S NAME Rojas	LOG NUMBER C07-02-0023	INSTITUTION SVSP	TODAY'S DATE 09-05-07
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2) When C/O's lifted me up off the ground did I begin to move my upper torso in a left and right motion? Inmate Rojas stated the inmate witnesses would state he did not move his upper torso in a left and right motion when the C/O's lifted him up off the ground, SHO agrees inmate witnesses would state that he did not move his upper torso in a left and right motion when the C/O's lifted him off the ground.

Based on the inmate's questions and stipulated responses, SHO determined it not necessary to call the listed witnesses to the hearing.

Inmate Rojas requested to view all angles of the video footage of cameras on Yard #2. SHO advised Inmate Rojas that he viewed the footage of the incident on 09-05-07. Inmate Rojas stated there are five cameras on Yard #2.

SHO called Sergeant M. Nilsson, Facility "C" yard sergeant as a witness.

**Witness Testimony at Hearing:** SHO asked Sergeant Nilsson the procedures for processing video tape evidence of incidents on the exercise yard.

Sergeant Nilsson stated the video tapes are reviewed after incidents and any footage discovered is processed into evidence per SVSP procedures.

**Classification Referral:** Referred to ICC for program review.

1) Where were you positioned when Inmate Rojas (P-58734) was being placed in flex cuffs? Inmate Rojas stated these inmates would state they were facing in his direction. SHO agrees inmate witnesses would state that they were facing in his direction.

2) When C/O's lifted me up off the ground did I begin to move my upper torso in a left and right motion? Inmate Rojas stated the inmate witnesses would state he did not move his upper torso in a left and right motion when the C/O's lifted him up off the ground. SHO agrees inmate witnesses would state that he did not move his upper torso in a left and right motion when the C/O's lifted him off the ground.

**Confidential Information:** Confidential information was not used in the adjudication of this 115.

**Findings:** Inmate Rojas is found guilty of the charged offense of violating CCR§ 3005(c); for the specific act of, "Battery on a Peace Officer," a Division "B" offense (CCR§ 3323(d)(1)). The evidence used to render this finding included:

- 1.) Rules Violation Report authored by Correctional Officer R. Loza, which states in part, "On Monday, February 12, 2007, at approximately 1515 hours...I responded to a disturbance on the Facility "C" Yard exercise yard...All inmates were compliant with staff instructions to crawl backwards towards the skirmish line...until we reached Inmate Rojas, (P-58734, C5-204)...Rojas refused several direct orders to remain prone and began advancing towards staff with clenched fists. After several orders to stop and assume a prone position on the ground, Rojas complied...During the escort, Rojas began violently twisting his upper torso, swinging his elbows wildly left to right...Rojas continued to violently swing his elbows, striking me on the right side of my rib cage, with his left elbow...I placed both my hands on his upper back area to gain the leverage necessary to force Rojas onto the ground in a prone position. Once on the ground, Rojas began shouting, 'Get them!...'"
- 2.) The Crime/Incident Report c-1 Supplemental Log# SVSP-FCY-07-02-0105, authored by Officer R. Loza.

SIGNATURE OF WRITER R. Parin	TITLE Correctional Lieutenant	DATE NOTICE SIGNED 9/6/07	
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STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

## RULES VIOLATION REPORT - PART C

PAGE 3 OF 3

CDC NUMBER P-58734	INMATE'S NAME Rojas	LOG NUMBER C07-02-0023	INSTITUTION SVSP	TODAY'S DATE 09-05-07
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**Conclusion:** Based on the RVR, incident reports and 7219 medical evaluations, this SHO finds the preponderance of the evidence has been met to render and sustain a finding of guilt on the charged offense of violating CCR§ 3005(c); specifically, "Battery on a Peace Officer," a Division "B" offense (CCR§3323 (d)(1)). After viewing the video tape, SHO was unable to observe Inmate Rojas assault staff due to the camera view being an overall view of the yard. The Reporting Employee, Officer Loza and Officer Sandoval clearly describe Inmate Rojas' resistive and assaultive actions during the escort to the Health Annex holding cell. SHO did observe Inmate Rojas on video tape footage of incident clearly get up from the prone position and approach the skirmish line, which necessitated several staff members to respond to his location, simultaneously the remaining inmates in the prone position got up and advanced towards the skirmish line.

**Additional Disposition:** None.

**Enemy Concerns:** There are no enemy concerns related to this disciplinary hearing.

**Appeal Rights:** Inmate Rojas was advised that the disposition of this Rules Violation Report would not become final until approved by the Chief Disciplinary Officer at which time he will receive a final copy of the completed CDC-115. He was also advised of his rights to appeal the findings of this hearing, the methods of appealing, and credit restoration rights pursuant to CCR§ 3327 & 3328, governing the restoration of forfeited credits.

SIGNATURE OF WRITER R. Parin		TITLE Correctional Lieutenant	DATE NOTICE SIGNED 9/6/07
COPY OF CDC-115-C GIVEN TO INMATE K		GIVEN BY: (STAFF'S SIGNATURE) <i>Mr.</i>	DATE SIGNED: 10/16/07 TIME SIGNED: 18:57